
SENATE BILL 6351

State of Washington 60th Legislature 2008 Regular Session

By Senators Prentice, Jacobsen, and Roach

Read first time 01/15/08. Referred to Committee on Ways & Means.

1 AN ACT Relating to providing that certain popcorn mixtures are not
2 prepared food for sales and use tax purposes; and amending RCW
3 82.08.0293.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.08.0293 and 2004 c 153 s 201 are each amended to
6 read as follows:

7 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
8 food and food ingredients. "Food and food ingredients" means
9 substances, whether in liquid, concentrated, solid, frozen, dried, or
10 dehydrated form, that are sold for ingestion or chewing by humans and
11 are consumed for their taste or nutritional value. "Food and food
12 ingredients" does not include:

13 (a) "Alcoholic beverages," which means beverages that are suitable
14 for human consumption and contain one-half of one percent or more of
15 alcohol by volume; and

16 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe
17 tobacco, or any other item that contains tobacco.

18 (2) The exemption of "food and food ingredients" provided for in

1 subsection (1) of this section shall not apply to prepared food, soft
2 drinks, or dietary supplements.

3 (a) "Prepared food" means:

4 (i) Food sold in a heated state or heated by the seller;

5 (ii) Food sold with eating utensils provided by the seller,
6 including plates, knives, forks, spoons, glasses, cups, napkins, or
7 straws. A plate does not include a container or packaging used to
8 transport the food; or

9 (iii) Two or more food ingredients mixed or combined by the seller
10 for sale as a single item, except:

11 (A) Food that is only cut, repackaged, or pasteurized by the
12 seller; or

13 (B) Popcorn that is mixed with two or more ingredients; or

14 (C) Raw eggs, fish, meat, poultry, and foods containing these raw
15 animal foods requiring cooking by the consumer as recommended by the
16 federal food and drug administration in chapter 3, part 401.11 of The
17 Food Code, published by the food and drug administration, as amended or
18 renumbered as of January 1, 2003, so as to prevent foodborne illness.

19 (b) "Prepared food" does not include the following food or food
20 ingredients, if the food or food ingredients are sold without eating
21 utensils provided by the seller:

22 (i) Food sold by a seller whose proper primary North American
23 industry classification system (NAICS) classification is manufacturing
24 in sector 311, except subsector 3118 (bakeries), as provided in the
25 "North American industry classification system--United States, 2002";

26 (ii) Food sold in an unheated state by weight or volume as a single
27 item; or

28 (iii) Bakery items. The term "bakery items" includes bread, rolls,
29 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
30 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

31 (c) "Soft drinks" means nonalcoholic beverages that contain natural
32 or artificial sweeteners. Soft drinks do not include beverages that
33 contain: Milk or milk products; soy, rice, or similar milk
34 substitutes; or greater than fifty percent of vegetable or fruit juice
35 by volume.

36 (d) "Dietary supplement" means any product, other than tobacco,
37 intended to supplement the diet that:

38 (i) Contains one or more of the following dietary ingredients:

1 (A) A vitamin;
2 (B) A mineral;
3 (C) An herb or other botanical;
4 (D) An amino acid;
5 (E) A dietary substance for use by humans to supplement the diet by
6 increasing the total dietary intake; or
7 (F) A concentrate, metabolite, constituent, extract, or combination
8 of any ingredient described in this subsection;
9 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
10 gelcap, or liquid form, or if not intended for ingestion in such form,
11 is not represented as conventional food and is not represented for use
12 as a sole item of a meal or of the diet; and
13 (iii) Is required to be labeled as a dietary supplement,
14 identifiable by the "supplement facts" box found on the label as
15 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as
16 of January 1, 2003.
17 (3) Notwithstanding anything in this section to the contrary, the
18 exemption of "food and food ingredients" provided in this section shall
19 apply to food and food ingredients that are furnished, prepared, or
20 served as meals:
21 (a) Under a state administered nutrition program for the aged as
22 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
23 74.38.040(6); or
24 (b) That are provided to senior citizens, disabled persons, or low-
25 income persons by a not-for-profit organization organized under chapter
26 24.03 or 24.12 RCW.
27 (4)(a) Subsection (1) of this section notwithstanding, the retail
28 sale of food and food ingredients is subject to sales tax under RCW
29 82.08.020 if the food and food ingredients are sold through a vending
30 machine, and in this case the selling price for purposes of RCW
31 82.08.020 is fifty-seven percent of the gross receipts.
32 (b) This subsection (4) does not apply to hot prepared food and
33 food ingredients, other than food and food ingredients which are heated
34 after they have been dispensed from the vending machine.
35 (c) For tax collected under this subsection (4), the requirements
36 that the tax be collected from the buyer and that the amount of tax be

1 stated as a separate item are waived.

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